

*In the Matter of Tracy Marguglio,
Sheriff's Officer Sergeant (PC2525E),
Cumberland County
DOP Docket No. 2004-1470
(Merit System Board, decided September 22, 2004)*

Tracy Marguglio, represented by Timothy J. P. Quinlan, Esq., appeals the determination of the Division of Selection Services which denied her request for a make-up examination for Sheriff's Officer Sergeant (PC2525E), Cumberland County.

The subject examination was administered on September 25, 2003 and consisted of 70 multiple choice items. It is noted that eight names appear on the resultant eligible list which expires on October 29, 2006.

On appeal, appellant indicates that she was hospitalized from September 21 through 23 due to severe abdominal pain, vomiting and rectal bleeding. She states that she was diagnosed with ulcerative colitis and "later, it was determined that I had an infection throughout my intestines." She notes that although she was discharged from the hospital on September 23, 2003, she still felt ill and she was instructed to stay at home and rest. She contends that on the test administration date she was very weak, lightheaded and suffered from mild abdominal pains. She argues that "there was no possible way that I could have driven over an hour to Trenton, then sit for another hour and a half and be able to focus to take the test. I did not feel well enough to return to work until Wednesday, October 01, 2003." In support of her appeal, she submits additional documentation including, a patient discharge instruction sheet, a Medical Authorization Form dated October 14, 2003 and a letter dated October 17, 2003 from Sheriff Michael F. Barruzza in which he indicates that "she did in fact suffer a debilitating illness as required in N.J.A.C. 4A:4-2.9(b)1 . . ."

CONCLUSION

The Orientation Guide indicated that make-up exams may be authorized for the following reasons: (1) error by the Department of Personnel or appointing authority; (2) serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons; (3) documented serious illness or death in the candidate's immediate family; (4) natural disaster; or (5) prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and (6) other valid reasons. See N.J.A.C. 4A:4-2.9(a).

In *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003)(allowing Police Sergeant candidates to take a make-up exam despite evidence that virtually all of the questions from the original exam had been disseminated throughout the police department prior to the administration of the make-up exam undermined the integrity of the examination process), the New Jersey Supreme Court ordered the Department of Personnel, for

future exams, to “administer make-up exams that contain substantially different or entirely different questions from those used in the original examination.” *Id.* at 66. As a result, a make-up examination pilot program was established, effective August 18, 2003 and running through August 17, 2004, to address test security concerns for public safety titles. The pilot program provided that make-up examinations for entry-level and promotional public safety exams may be authorized only in cases of: (a) error by the Department of Personnel or appointing authority; (b) death in the candidate’s immediate family as evidenced by a copy of the death certificate; (c) catastrophic illness wherein the candidate has either suffered a life-threatening injury or illness, or requires an extended convalescent period, as evidenced by a doctor’s diagnosis and statement, as well as documentation from the candidate’s employer noting the candidate’s related leave from work; (d) military leave, pursuant to N.J.A.C. 4A:4-2.9(c); or (e) exoneration from pending disciplinary or criminal charges, pursuant to N.J.A.C. 4A:4-2.9(d). In addition, candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered.

Under the stricter standards of the pilot program, a candidate had to provide evidence of a catastrophic illness wherein he or she had either suffered a life-threatening injury or illness, or required an extended convalescent period. Although the pilot program does not provide a definition of an extended convalescent period, N.J.A.C. 4A:6-1.22 (Donated leave program) provides guidance in this matter. N.J.A.C. 4A:6-1.22(b) defines a catastrophic health condition or injury as a life-threatening condition or combination of conditions or a period of disability required by an employee’s mental or physical health or the health of the employee’s fetus and requiring the care of a physician who provides medical verification of the need for the employee’s absence from work for 60 or more work days.

In her initial request, appellant submitted a note from Jan P. Long, MSN, NPC dated September 24, 2003 which indicated that she was discharged from the hospital on September 23, 2003 for ulcerative colitis and “can possibly return to work on Friday 9/26/03.” In the Medical Authorization form dated October 14, 2003, Dr. Robert Dickson indicated that appellant was “much too weak to leave the house as she was clearly not fully recovered from her illness. She was medically cleared to return to work on 10-01-03.”

While appellant’s illness may have precluded her participation on the exam administration date, she was able to return to work approximately within a week after being discharged from the hospital. As such, her illness did not require an extended convalescence period. Thus, she does not meet the criteria for a make-up examination. *See e.g., In the Matter of Jim Bantin, Fire Fighter (M9999D), Various Jurisdictions* (MSB, decided May 15, 2004) (Fire Fighter candidate who went to hospital emergency room with gastritis and abdominal pain was denied make-up under pilot program).

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.